

## Office of the Secretary of Defense

## § 152.1

State to give “sympathetic consideration” to such request) and if such authorities refuse to waive jurisdiction, the commanding officer shall request the Department of State to press such request through diplomatic channels and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives;

(d) A representative of the United States to be appointed by the Chief of Diplomatic Mission with the advice of the senior U.S. military representative in the receiving State will attend the trial of any such person by the authorities of a receiving State under the agreement, and any failure to comply with the provisions of paragraph 9 of Article VII of the Agreement shall be reported to the commanding officer of the Armed Forces of the United States in such State who shall then request the Department of State to take appropriate action to protect the rights of the accused, and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives.

### § 151.7 Fair trial guarantees.

The following is a listing of “fair trial” safeguards or guarantees that are considered to be applicable to U.S. State court criminal proceedings, by virtue of the 14th Amendment as interpreted by the Supreme Court of the United States. The list is intended as a guide for the preparation of country law studies prescribed by § 151.4 and for the determinations made by the designated commanding officer under § 151.4(e) through § 151.4(g). Designated commanding officers should also consider other factors that could result in a violation of due process of law in State court proceedings in the United States.

(a) Criminal statute alleged to be violated must set forth specific and definite standards of guilt.

(b) Accused shall not be prosecuted under an *ex post facto* law.

(c) Accused shall not be punished by bills of attainder.

(d) Accused must be informed of the nature and cause of the accusation and have a reasonable time to prepare a defense.

(e) Accused is entitled to have the assistance of defense counsel.

(f) Accused is entitled to be present at the trial.

(g) Accused is entitled to be confronted with hostile witnesses.

(h) Accused is entitled to have compulsory process for obtaining favorable witnesses.

(i) Use of evidence against the accused obtained through unreasonable search or seizure or other illegal means is prohibited.

(j) Burden of proof is on the Government in all criminal trials.

(k) Accused is entitled to be tried by an impartial court.

(l) Accused may not be compelled to be a witness against him or herself; and shall be protected from the use of a confession obtained by torture, threats, violence, or the exertion of any improper influence.

(m) Accused shall not be subjected to cruel and unusual punishment.

(n) Accused is entitled to be tried without unreasonable (prejudicial) delay.

(o) Accused is entitled to a competent interpreter when the accused does not understand the language in which the trial is conducted and does not have counsel proficient in the language both of the court and of the accused.

(p) Accused is entitled to a public trial.

(q) Accused may not be subjected to consecutive trials for the same offense that are so vexatious as to indicate fundamental unfairness.

## PART 152—REVIEW OF THE MANUAL FOR COURTS-MARTIAL

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APPENDIX A TO PART 152—GUIDANCE TO THE  
JOINT SERVICE COMMITTEE (JSC)

AUTHORITY: E.O. 12473; 10 U.S.C. 47.

SOURCE: 68 FR 36916, June 20, 2003, unless  
otherwise noted.

### § 152.1 Purpose.

This part:

## § 152.2

## 32 CFR Ch. I (7–1–04 Edition)

(a) Implements the requirement established by the President in Executive Order 12473 that the Manual for Courts-Martial (MCM), United States, 1984, and subsequent editions, be reviewed annually.

(b) Formalizes the Joint Service Committee (JSC) and defines the roles, responsibilities, and procedures of the JSC in reviewing and proposing changes to the MCM and proposing legislation to amend the Uniform Code of Military Justice (UCMJ) (10 U.S.C., Chapter 47).

(c) Provides for the designation of a Secretary of a Military Department to serve as the Executive Agent for the JSC.

### § 152.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard by agreement with the Department of Homeland Security when it is not operating as a Service of the Department of the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter collectively referred to as “the DoD Components”).

### § 152.3. Policy.

To assist the President in fulfilling his responsibilities under the UCMJ, and to satisfy the requirements of Executive Order 12473, the Department of Defense shall review the Manual for Courts-Martial annually, and, as appropriate, propose legislation amending the UCMJ to ensure that the MCM and the UCMJ fulfill their fundamental purpose as a comprehensive body of military criminal law and procedure. The role of the JSC furthers these responsibilities. Under the direction of the General Counsel of the Department of Defense, the JSC is responsible for reviewing the MCM and proposing amendments to it and, as necessary, to the UCMJ.

### § 152.4. Responsibilities.

(a) The General Counsel to the Department of Defense shall:

(1) Administer this part, to include coordination on and approval of legislative proposals to amend the UCMJ, approval of the annual review of the MEM, and coordination of any proposed changes to the MCM under OMB Circular A-19.<sup>1</sup>

(2) Designate the Secretary of a Military Department to serve as the joint Service provider for the JSC. The joint Service provider shall act on behalf of the JSC for maintaining the JSC's files and historical records, and for publication of the updated editions of the MCM to be distributed throughout the Department of Defense, as appropriate.

(3) Invite the Secretary of Homeland Security to appoint representatives to the JSC.

(4) Invite the Chief Judge of the United States Court of Appeals for the Armed Forces to provide a staff member to serve as an advisor to the JSC.

(5) Invite the Chairman of the Joint Chiefs of Staff to provide a staff member from the Chairman's Office of Legal Counsel to serve as an advisor to the JSC.

(6) Ensure that the Associate Deputy General Counsel (Military Justice and Personnel Policy), Office of the General Counsel, Department of Defense, shall serve as the General Counsel's representative to the JSC in a non-voting capacity. In addition, the United States Court of Appeals for the Armed Forces (USCAAF) and the Legal Counsel to the Chairman of the Joint Chiefs of Staff shall be invited to provide a staff member to serve as an advisor to the JSC in a non-voting capacity.

(b) The Secretaries of the Military Departments shall ensure that the Judge Advocates General of the Military Departments and the Staff Judge Advocate to the Commandant of the Marine Corps appoint representatives to the JSC.

(c) The JSC shall further the DoD policy established in section 3 of this part and perform additional studies or other duties related to the administration of military justice, as the General Counsel of the Department of Defense may direct. (See DoD Directive 5105.18,

<sup>1</sup>Available at <http://www.whitehouse.gov/omb/circulars/index.html>.